

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Civil No. 09-13564

Honorable Anna Diggs Taylor

Magistrate Judge Michael Hluchaniuk

v.

THREE HUNDRED SIXTY FIVE  
THOUSAND FOUR HUNDRED  
FORTY DOLLARS (\$365,440.00)  
IN UNITED STATES CURRENCY

Defendant *in Rem*.

---

**DECLARATION OF JULIA CAROFF PIDGEON IN SUPPORT OF REQUEST  
FOR ENTRY OF DEFAULT AGAINST MARK JAY APSEY, IN HIS INDIVIDUAL  
CAPACITY ONLY, FRANK MICHAEL SCHMIDT AND ADAM TRACY**

I, JULIA CAROFF PIDGEON, declare and say:

1. I am an Assistant United States Attorney representing Plaintiff, the United States of America, in this action. In that capacity, I am familiar with the facts of this case.
2. This declaration is submitted in support of the request of the United States of America to the Clerk of this Court for entry of default against Frank Schmidt, Adam Tracy and Mark Jay Apsey in his individual capacity only, as to the defendant \$365,440.00 in United States currency.
3. On September 10, 2009, a verified Complaint For Forfeiture was filed pursuant to Rule G(4) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, and a Warrant of Arrest and Notice In Rem was issued against the Defendant property. (See Docket Entry No. 1).

4. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were served upon CNP Akama Ventures, LLC by certified and regular mail at 230 East Harrison, Royal Oak, Michigan directed to its president, Mark Jay Apsey on September 10, 2009 (Exhibit A). A Certificate of Service was filed with the Court on September 10, 2009. (*See Docket Entry No. 2*). The pleadings sent by way of certified mail and regular mail were returned to sender, and marked, "moved left no address, unable to forward." (Exhibit B).

5. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were served upon Michael J. Rex, Esq. by certified mail and regular mail at 1760 S. Telegraph Road, Suite 300, Bloomfield Hills, Michigan 48302 on September 10, 2009, because he was the attorney for CNP Akama Ventures, LLC who filed a claim to the Defendant Currency on behalf of CNP Akama Ventures, LLC during the administrative phase. (*See Docket Entry No. 2-Certificate of Service*). The certified mail sent to Michael J. Rex, Esq. was delivered on September 11, 2009, as evidenced by the Domestic Return Receipt (Exhibit C).

6. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were also served on Mark Jay Apsey in his individual capacity by certified mail and regular mail at 5049 Elizabeth Lake Road, Waterford, Michigan 48327 on September 10, 2009. (*See also Docket Entry No. 2-Certificate of Service*). The certified mail sent to Mark Jay Apsey was forwarded by the United States Postal Service to Mark J. Apsey at 1738 Heron Ridge Drive, Bloomfield Hills, Michigan 48302-0723 and was received on September 15, 2009, as evidenced by the Domestic Return Receipt (Exhibit D).



7. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were served on Frank Michael Schmidt by certified mail and regular mail at 1741 Portage Run, Glenview, Illinois, 60025 on September 10, 2009 (*See Docket Entry No. 2-Certificate of Service*). The certified mail was delivered to Frank Michael Schmidt on September 12, 2009, as evidenced by the Domestic Return Receipt (Exhibit E).

8. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were served on Jeffrey Steinback, Esq. by certified mail and regular mail at 53 West Jackson Boulevard, Suite 1420 Chicago, Illinois, 60604 as the attorney for Frank Michael Schmidt on September 11, 2009 (Exhibit F). A certificate of service was filed with the court on September 11, 2009 (*See Docket Entry No. 4*). According to the United States Postal Service website's track and confirm function, the certified mail that was sent to Jeffrey Steinback, Esq., under certified mail receipt number 7002 0860 0000 3802 8824, was delivered on September 15, 2009, at 12:17 p.m. (See Exhibit F). The pleadings served by way of regular mail were not returned to sender.

9. Copies of the Complaint for Forfeiture and Warrant of Arrest and Notice *In Rem* were served on Adam Tracy by certified mail and regular mail at 122 Mill Street, Rochester, Michigan 48307 on September 10, 2009 (Exhibit G). A certificate of service was filed with the court on September 10, 2009 (*See Docket Entry. No. 2*). According to the track and confirm information available on the United States Postal Service website, the post office attempted to deliver the pleadings sent via certified mail, under certified mail receipt number 7002 0860 0000 3234, to Adam Samuel Tracey on September 17, 2009, and, when no one was available to accept delivery, notice was left. Delivery was attempted again on October 17, 2009, and, once again, notice was

left of the attempted delivery (Exhibit G). The pleadings sent by way of regular mail were not returned to sender.

10. CNP Akama Ventures, LLC., Mark Jay Apsey individually, Frank Michael Schmidt and Adam Tracy were required to file a verified claim within thirty (35) days of receipt of the pleadings, and an answer within twenty (20) thereafter. The Warrant and Notice in Rem explained the procedures for filing a claim and an answer, and warned that failure to follow the procedures could result in the entry of a default judgement and forfeiture order vesting title to the Defendant Currency in the United States of America.

11. Pursuant to Rule G(4) of the Supplemental Rules for Certain Admiralty or Maritime Claims and Asset Forfeiture Actions, Notice of Civil Forfeiture was published on an official government internet site for at least 30 consecutive days beginning September 11, 2009, as required by Rule G(4)(a)(iv)(C), directing that any person claiming an interest in the defendant *in rem* file a verified claim within sixty (60) days after the first date of publication, and to file an answer to the complaint within twenty (20) days thereafter, pursuant to Rule G(4)(b)(ii)(B) and (C). A Declaration of Publication was filed with the Court on October 13, 2009. (*See Docket Entry No. 7*).

12. CNP Akama Ventures, LLC filed a verified claim to the Defendant Currency on October 13, 2009 and an Answer to the Complaint with Affirmative Defenses on October 30, 2009 (*See Docket Entry Nos. 6 and 8*). Mark Jay Apsey, in his individual capacity, Frank Michael Schmidt, and Adam Tracy have not filed verified claims to the Defendant Currency, and the time for doing so has expired.



13. Upon information and belief, Mark Jay Apsey, Frank Michael Schmidt, and Adam Tracy are not minors, are not on active duty with the United States Military, and are not an incompetent persons.

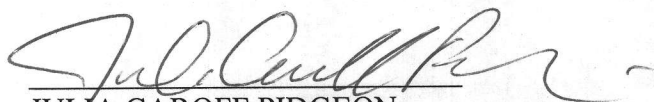
14. Based upon the foregoing, entry of default against Mark Jay Apsey, in his individual capacity only, Frank Michael Schmidt, and Adam Tracy as to the Defendant Currency is warranted under Federal Rule of Civil Procedure 55(a).

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19 day of November, 2009.

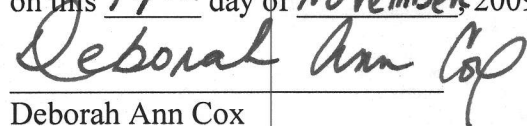
Respectfully submitted,

TERRENCE BERG  
United States Attorney



JULIA CAROFF PIDGEON  
Assistant United States Attorney  
211 W. Fort Street, Suite 2001  
Detroit, Michigan 48226  
Phone: (313) 226-9772  
E-mail: [julia.pidgeon@usdoj.gov](mailto:julia.pidgeon@usdoj.gov)

Subscribed and sworn to before me by  
Assistant U.S. Attorney Julia Caroff Pidgeon  
for U.S. Attorney Terrence Berg  
on this 19<sup>th</sup> day of NOVEMBER, 2009.



Deborah Ann Cox  
Notary Public, State of Michigan  
County of Wayne  
My commission expires: 05/05/2014  
Acting in the County of Wayne

DEBORAH ANN COX  
NOTARY PUBLIC, STATE OF MI  
COUNTY OF WAYNE  
MY COMMISSION EXPIRES May 5, 2014  
ACTING IN COUNTY OF Wayne